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No. 03-435

Supreme Court, U.S.
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In The
Supreme Court of the United States

HAROLD LEONARD,

Petitioner,

v.

UNIVERSITY OF DELAWARE,
a corporation of the State of Delaware,
PAUL METTLER, and MARY MARTIN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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15 pp

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the Court should exercise its discretion to review this case when the Third Circuit Court of Appeals determined it did not have jurisdiction to hear the underlying appeal regarding enforcement of a settlement agreement by the United States District Court for the District of Delaware.

(Negative answer sought by Respondents).

2. Whether the Court should exercise its discretion to review whether the Third Circuit Court of Appeals erred in affirming the United States District Court for the District of Delaware's award of attorneys' fees associated with the motion to enforce to Respondents.

(Negative answer sought by Respondents).

STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Not Applicable. The University of Delaware is a non-stock, membership corporation, and a creature of statute. *See* 14 Del. Code Ann. Part II.

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COUNTERSTATEMENT OF THE CASE

In July 1996, petitioner Harold Leonard ("Petitioner") filed a Complaint in the United States District Court for the District of Delaware ("District Court") against the Respondents the University of Delaware (the "University"), Paul Mettler, and Mary Martin (collectively, "Respondents") in which Petitioner alleged violations of his constitutional rights to due process and the breach of a settlement agreement in a previous lawsuit he had brought against the University. District Court Memorandum and Order, May 24, 2002, Appendix E, p. 14a.[1] On November 20, 2001, following more than five years of litigation, a settlement conference was convened by the District Court, and a settlement was reached. Petitioner's assertion that a *signed* settlement agreement was docketed in the District Court prior to November 2001 (*see* Petition for Writ of Certiorari (the "Petition"), p. 3) is erroneous. Though prior settlement terms were negotiated, Petitioner was unable to meet the terms of the settlement, as evidenced by the District Court's willingness to continue the litigation.

The District Court summarized the background of this case as follows:

> On November 21, 2001, the defendants [Respondents] maintain that they reached a settlement agreement with Leonard [Petitioner]. The terms of the purported agreement contained the following two conditions: (1) the University would

[1] Appendix references are to Appendices A-E to the Petition for Writ of Certiorari.

award Leonard a Masters of Science degree in Health Promotion and (2) the University would pay Leonard $300,000.

The parties reached agreement on these terms of settlement as a result of a lengthy settlement conference convened by the court on November 20, 2001. The November 20, 2001 settlement conference was preceded by a settlement conference on November 2, 2001. The purpose of the earlier settlement conference was to discuss the University's offer to permit Leonard to earn a Master's degree in Physical Therapy. After negotiating for several hours, Leonard rejected this offer. At that time, he indicated, through his counsel, Mr. Neuberger, that any settlement agreement would have to include a monetary payment.

Throughout the November 20, 2001 negotiations, the defendants maintain that they were under the impression that Leonard continued to be represented by counsel. [fn 5 – Although Leonard's counsel had previously filed a motion to withdraw from the case, the court merely took this motion under advisement. Accordingly, Leonard remained represented.] Under that assumption, the defendants then proceeded to implement the terms of settlement. This required them to restructure and reclassify Leonard's academic record to support a Master's Degree in Health Promotion. The defendants communicated with Leonard's counsel regarding Leonard's academic record throughout this process.

On January 18, 2002, the defendants' counsel forwarded to Mr. Neuberger the University's proposed revised transcript. Once Leonard had reviewed and approved his transcript, the University

> contends it was prepared to award him a Master's degree in Health Promotion on or about February 5, 2002. [fn 6 – February 5, 2002 is the date when the University was to award degrees, following the conclusion of the University's Winter Session.]
>
> Several weeks after sending the January 18, 2002 communication, the defendants received a voicemail message from Mr. Neuberger. In that voicemail, he indicated that his client had reviewed the proposed revised transcript and had requested that a few modifications be made. The University made the requested changes. On March 4, 2002, the defendants forwarded the revised transcript, along with the Settlement Agreement, to Mr. Neuberger.
>
> On March 24, 2002, the court received a letter directly from Leonard. In that letter, Leonard stated that there was no settlement and requested that his case be put back on the trial calendar. The bases for his request are that: (1) his counsel did not represent him during settlement negotiations, (2) the settlement is "simply unacceptable," and (3) the settlement agreement is the product of duress.

District Court Memorandum and Order, May 24, 2002, Appendix E, pp. 15a-17a.

On April 15, 2002, Respondents filed a Motion to Enforce Settlement Agreement seeking to enforce the terms of the Settlement Agreement reached by the parties as a result of the November 20, 2002 settlement conference. *Id.* at 15a. On May 24, 2002, the District Court granted the Respondents' Motion to Enforce and awarded the Respondents their attorneys' fees and costs associated

with the motion. *Id.* at 25a. With regard to the award of attorneys' fees, the District Court concluded:

> While recognizing that a request for attorneys' fees should only be granted in exceptional circumstances, the court concludes that Leonard's attempts at avoidance of his obligations under the settlement agreement is [sic] both in bad faith and vexatious. The defendants [Respondents] began fulfilling their obligations under the settlement agreement in good faith. This is evidenced by a series of written and oral communications directed to Leonard's counsel over a period of several months. The defendants took great pains to detail their efforts at fulfilling their obligations in those communications. At no time during the defendants' lengthy preparations did Leonard object to the existence of a valid settlement agreement. Rather, he waited until the end of March, after defendants had largely met their obligations, to object.
>
> However, the court does not rest its decision merely on Leonard's timing. Indeed more egregious still is Leonard's behavior during the events leading to the present motion to enforce the settlement. In his initial letter to the court on March 24, 2002, Leonard was unequivocal that he wanted the court to return his case to the trial calendar because he was no longer interested in settling. Nonetheless on May 2, 2002, through his counsel, he informed the court that he now believes settlement is possible, albeit with additional, different terms to the agreement. The court finds this behavior troubling for two reasons.

> First, . . . one of Leonard's proposed terms requires that he not be deemed to have waived a later claim denying there is a settlement . . .
>
> Second, one of Leonard's most strenuous objections to the existence of a binding settlement agreement is that he was not adequately represented by his counsel . . . However, he is still represented by the same attorney.

Id. at 22a-25a.

On June 13, 2002, Respondents submitted a fee petition and motion for leave to deduct their fees from the $300,000 settlement amount before remitting the settlement amount to Petitioner. District Court Order, July 9, 2002, Appendix D, p. 11a. In its July 9, 2002 Order, the District Court approved the fee petition and the deduction of fees from the settlement amount, but the District Court ordered the Respondents to remit to Petitioner those monies previously withheld from the settlement as costs. *Id.* at 13a.

On August 8, 2002, Petitioner filed an appeal in the Third Circuit Court of Appeals ("Court of Appeals"). Court of Appeals Opinion, May 8, 2003, Appendix B, p. 5a. On May 8, 2003, the Court of Appeals found that it did not have jurisdiction to review the District Court's May 24, 2002 decision to enforce the settlement agreement due to the untimeliness of Petitioner's (then Appellant) appeal. Court of Appeals Judgment, May 8, 2003, Appendix C, p. 9a. The Court of Appeals determined that it did have jurisdiction to review the District Court's July 9, 2002 decision to award attorneys' fees, and the Court of Appeals affirmed that decision on the basis that the District Court did not abuse its discretion. Court of Appeals Opinion,

May 8, 2003, Appendix B, pp. 6a-7a. On June 19, 2003, the Court of Appeals denied Petitioner's Sur Petition for Rehearing *En Banc*. Court of Appeals, Sur Petition for Rehearing *En Banc*, June 19, 2003, Appendix A, p. 2a.

Petitioner filed the instant Petition on September 17, 2003.

REASONS FOR DENYING THE WRIT

I. THE COURT SHOULD NOT EXERCISE ITS DISCRETION TO REVIEW THE THIRD CIRCUIT COURT OF APPEALS' DECISION THAT IT LACKED JURISDICTION TO REVIEW THE DISTRICT COURT'S MAY 24, 2002 ORDER ENFORCING THE SETTLEMENT AGREEMENT

A. Petitioner's Appeal From The District Court's May 24, 2002 Order Enforcing The Settlement Agreement Was Not Timely.

The District Court's May 24, 2002 Order granting Respondents' (then Defendants) motion to enforce the settlement agreement was a decision on the merits (28 U.S.C. § 1291), and, as such, Petitioner (then Plaintiff) had 30 days to appeal the Order. Fed. R. App. Pro. 4(a)(1)(A). *See* Court of Appeals' Opinion, May 8, 2003, Appendix B, pp. 5a-6a. Petitioner failed to meet the prescribed time period for filing a notice of appeal of the Order enforcing the settlement agreement, and as such the Court of Appeals lacked jurisdiction to review the matter.

Section 1291 provides in part, "The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . ."

Appellate Rule 4(a)(1)(A) provides, "In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered." The 30 day time period is a mandatory limit on the time for filing an appeal. *See Browder v. Director of Dep't of Corrections*, 434 U.S. 257 (1978). Absent a timely notice of appeal, the Court of Appeals is without jurisdiction to review the District Court's Order.

Petitioner's notice of appeal was filed on August 8, 2002, more than 30 days after entry of the May 24, 2002 Order. The Court of Appeals, therefore, did not have jurisdiction to review the Order enforcing the settlement agreement. Significantly, Petitioner mentions only in passing the Court of Appeals' ruling that it lacked jurisdiction. Petition, p. 1 n.1, p. 8. Petitioner fails to present any argument or case law to suggest that the Court of Appeals' ruling was in error.

B. The Court Of Appeals' Enforcement Of Mandatory Jurisdictional Time Periods Does Not Merit Review.

The Court of Appeals had no choice but to decline to review the Order enforcing the settlement agreement. The jurisdictional time period prescribed by Rule 4(a)(1)(A) is mandatory. As such, Respondents respectfully submit that the Court should not exercise its discretion to review this decision.

Reviewing a court's proper application of a settled rule of appellate jurisdiction hardly rises to the level of "compelling" as required by Supreme Court Rule 10. Though neither exhaustive nor controlling, the list of considerations

governing review on certiorari includes the following, none of which are present in the instant Petition:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Supreme Court Rule 10. Rule 10 concludes by stating that even "erroneous factual findings or the misapplication of a properly stated rule of law" will not usually warrant grant of a petition. *Id.*

Here, Petitioner would have the Court review a non-discretionary, correct application of a well-established federal rule of appellate jurisdiction. No conflict among the courts exists. No important federal question exists. And no support for review by the Court appears in Petitioner's papers. Petitioner's failure to address the jurisdictional issue in any meaningful way exposes most tellingly the

absence of any possible reason for this Court to review the Court of Appeals' decision that it lacked jurisdiction to review the District Court's May 24, 2002 decision.

Virtually all of the Petitioner's brief is directed at a matter to which the Court of Appeals gave no consideration in its decision because it found it had no jurisdiction to do so – the merits of the District Court's decision to enforce the parties' settlement agreement. "In accord with accepted principles, [this Court] will decline to consider these issues" that the Court of Appeals did not address or decide. *See F.T.C. v. Travelers Health Assn.*, 362 U.S. 293, 299 n.4 (1960).

II. THE COURT OF APPEALS DID NOT ABUSE ITS DISCRETION WHEN IT AFFIRMED THE DISTRICT COURT'S AWARD OF ATTORNEYS' FEES

Petitioner filed a timely notice of appeal from the District Court's July 9, 2002 Order awarding of $5,837.75 in attorneys' fees to the Respondents. Recognizing the District Court's inherent equitable power to award attorneys' fees, when appropriate, and Petitioner's "insupportable renunciation" of the settlement agreement, the Court of Appeals correctly affirmed the District Court's July 9 Order.

In *Chambers v. Nasco, Inc.*, the Court recognized that courts may assess attorneys' fees against a party for that party's vexatious, wanton, oppressive and/or bad faith actions. 501 U.S. 32, 46 (1991). As chronicled in both the Court of Appeals and District Court decisions, Petitioner engaged in "insupportable" and "egregious" behavior. Court of Appeals Opinion, May 8, 2003, Appendix B, p. 7a;

District Court Memorandum and Order, May 24, 2002, Appendix E, pp. 23a-24a.

The Court of Appeals, after reviewing the record and the parties' contentions, "conclude[d] that the District Court did not abuse its discretion in awarding attorneys' fees." Court of Appeals' Opinion, May 8, 2003, Appendix B, p. 7a. For the reasons set forth in the District Court Memorandum and Order, and by the Court of Appeals, that decision was plainly correct. District Court Memorandum and Order, May 24, 2002, Appendix E, pp. 22a-25a.

In any case, the Court of Appeals' decision on this issue involving the exercise of discretion by the District Court is not one that warrants review by this Court.

CONCLUSION

For all of the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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Dated: October 22, 2003 *Attorneys for Respondents*